Office-Supreme Court, U.S.
FILED
APR 1 1985
ALEXANDER L. STEVAS,
CLERK

(3)

No. 84-1325

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

FRANK V. PONTERIO, PETITIONER
v.
EDWARD I. KOCH, both inidividually and as Mayor of the City of New York, THE CITY OF NEW YORK, CAROL BELLAMY, both individually and as President of the Council of the City of New York, THOMAS CUITE, both individually and as Majority Leader and Vice Chairman of the Committee on Rules, Privileges, and Elections of the Council of the City of New York, THE COUNCIL OF THE CITY OF NEW YORK, MELVIN MARKUS, both individually and as Chairman of the Council Redistricting Commission, and THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

Frank V. Ponterio, pro se
766 Pelton Avenue
Staten Island, New York 10310
(718) 981-7953

QUESTION PRESENTED

Whether denial of a candidate's right to appear on the ballot for a municipal election, resulting from the failure of the municipality to comply timely with preclearance requirements of 42 U.S.C. 1973, et seq., is a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

Page

Question presented i

Table of authorities ii

Argument 1

Conclusion 3

TABLE OF AUTHORITIES

Cases: Page

Hadley v. Junior College District, 397 U.S. 50 1
Moore v. Ogilvie, 394 U.S. 814 2
Perkins v. Matthews, 400 U.S. 379 .. 2
Rodriguez v. Popular Democratic Party, 457 U.S. 1 1

ARGUMENT

FURTHER REVIEW IS WARRANTED IN THIS CASE BECAUSE THE COURT OF APPEALS ERRED IN HOLDING THAT POSTPONEMENT OF COUNCIL ELECTIONS WAS REASONABLE AS A MATTER OF LAW AND DID NOT DEPRIVE PETITIONER OF DUE PROCESS.

Respondents argue that the right to vote or run for public office is not per se constitutionally guaranteed, relying on Rodriguez v. Popular Democratic Party, 457 U.S. 1, 9 (1982). Respondents' reliance is misplaced. In Rodriguez, appellants challenged a valid state statute that provided for interim appointments rather than general elections to fill legislative vacancies. The Court's holding that the right to vote per se is not constitutionally protected means only that states may choose to have certain officials selected by means other than popular election. Hadley v. Junior College District, 397 U.S. 50 (1970). Such holding has no relevance to the

instant case. Once a state chooses popular election as the means for selecting public officers, as in the instant case, such election must be carried out in accordance with Constitutional requirements. Moore v. Ogilvie, 394 U.S. 814, 818.

Respondents also contend that the Court of Appeals decision in the instant case does not conflict with Perkins v. Matthews, 400 U.S. 379 (1971). Respondents cite the Court's prefatory remarks, Perkins 400 U.S. at 396:

> Moreover, based upon ample proof of repeated evasion of Court decrees and of extended litigation designed to delay the implementation of federal constitutional rights...

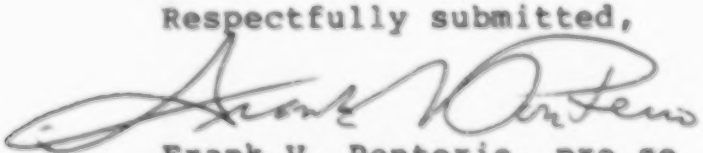
and assert that this "language" has no bearing on the instant case. Again, respondents' assertion is irrelevant. The language cited by respondents had no bearing on the circumstances in Perkins

either. It was merely dictum expressing the underlying reason for Congress enacting the preclearance provisions of the Voting Rights Act of 1965, 42 U.S.C. 1973 (c), and not part of the Court's holding. See 1965 U.S. Code Cong. and Adm. News, p. 2437, 2441. There was in Perkins no evasion of Court decrees or extended litigation. Both Perkins and the instant case involved a municipality's attempts to enforce changes in voting requirements, including redistricting, without first obtaining preclearance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Frank V. Ponterio, pro se
Petitioner

Dated: March 26, 1985